

**ORIGINAL**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
**AirTouch Paging** )  
 ) RM-\_\_\_\_\_  
**Petition for Rulemaking** )  
**to Establish a Dedicated 8XX Code** )  
**for Toll-Free Calls Placed** )  
**from Pay Telephones** )

To: The Commission

**PETITION FOR RULEMAKING**

AirTouch Paging ("AirTouch"), by its attorneys and pursuant to Section 1.401(a) of the Commission's Rules, hereby petitions the Commission to initiate a proceeding proposing to dedicate a service area code (or range of numbers therein) within the North American Numbering Plan to create an additional option for toll-free number (e.g., 800/888) subscribers to compensate payphone service providers ("PSPs") for toll-free calls placed from pay telephones. In support hereof, the following is respectfully shown:

**I. Preliminary Statement**

Section 276 of the Communications Act of 1934, as amended (the "Act"), which was enacted as part of the Telecommunications Act of 1996 (the "1996 Act"), mandated a new regulatory structure and compensation system for pay telephones in the United States. Congress required the Commission to adopt rules by October 9, 1996 to effect these changes, for the express purpose of "promot[ing] competition among payphone

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service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276(b)(1).

The Commission adopted rules implementing Section 276 in September 1996.<sup>1/</sup> The Commission has revised the rules twice<sup>2/</sup> and has granted numerous waivers of various provisions of the rules.<sup>3/</sup> Substantial uncertainty about the rules continues to exist, however, due to further appeal proceedings, the rule waivers, and technological limitations.<sup>4/</sup> With respect to calls placed to toll-free numbers from payphones, which constitute a substantial percentage of all payphone calls,<sup>5/</sup> debate continues as to whether the Commission's rules have achieved the goals established by Congress and set forth in

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<sup>1/</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Report and Order*, 11 FCC Rcd 20,541 (1996) ("*First Payphone Order*").

<sup>2/</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Order on Reconsideration*, 11 FCC Rcd 21,233 (1996) ("*First Payphone Reconsideration Order*"); *Second Report and Order*, FCC 97-371, released October 9, 1997 ("*Second Payphone Order*").

<sup>3/</sup> *See, e.g., Memorandum Opinion and Order*, DA 98-642, released April 3, 1998; *Memorandum Opinion and Order*, DA 98-481, released March 9, 1998; *Order*, DA 97-2162, released October 7, 1997.

<sup>4/</sup> Petitions for reconsideration of the *Second Payphone Order* filed by virtually all industry segments are pending before the Commission, and appeals of the *Second Payphone Order* are before the Court of Appeals in *MCI v. FCC*, Case Nos. 97-1675 *et al.*

<sup>5/</sup> The record in CC Docket No. 96-128 reflects that the average payphone originates more than 85 toll-free subscriber calls per month. *First Payphone Order*, para. 125. *See also Second Payphone Order*, para. 49.

Section 276, and PSPs have complained that they are not receiving compensation to which they are entitled.<sup>6/</sup>

AirTouch proposes herein a payment compensation plan which is consistent with Congressional and Commission goals, and which is intended to function as a supplement to, rather than a replacement for, the existing compensation system. AirTouch requests that the Commission initiate a proceeding to amend its payphone compensation rules to incorporate AirTouch's proposal.

## **II. There Is Good Cause to Initiate the Requested Proceeding**

The Commission has expressed its inclination to conduct a separate proceeding to address issues related to the ongoing implementation of its authority under Section 276 of the Act.<sup>7/</sup> The importance of these payphone compensation issues justifies initiating such a proceeding immediately. Such a proceeding also is consistent with the Commission's promise to investigate the state of competition in the payphone market and to determine whether the rules and policies set forth in the *Payphone Orders* are adequately serving the purposes of Section 276 and the public interest.<sup>8/</sup>

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<sup>6/</sup> See, e.g., Reply Comments of the American Public Communications Council on the Requests for Waivers of the ANI Digits Requirement, CC Docket No. 96-128, filed November 6, 1997.

<sup>7/</sup> See *Second Payphone Order*, paras. 132-133.

<sup>8/</sup> See *First Payphone Order*, paras. 51, 61.

### **III. The Rules Should Be Amended to Provide Dedicated 8XX Numbers for Toll-Free Calls**

AirTouch proposes that the Commission establish and dedicate a unique 8XX code, or a dedicated range of numbers within such a code, for toll-free calls, which would guarantee both compensation for PSPs and the opportunity for toll-free subscribers to place and receive calls from payphones.<sup>9/</sup> Under this proposal, a toll-free subscriber would have three options: (1) subscribe to a traditional toll-free number and incur per-call payphone charges passed through by the carrier; (2) subscribe to a traditional toll-free number, but block calls from payphones and thereby avoid incurring pass-through per-call charges; or (3) subscribe to a dedicated 8XX number that would allow the subscriber to receive calls without a payphone surcharge, because the calling party would pay the PSP's local coin rate directly. A call placed using the 8XX number would be free with respect to toll charges for the service.

A key feature of this plan is that an entire NXX is not required.<sup>10/</sup> So long as the toll-free numbers to which the payphone caller is required to pay the payphone usage are

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<sup>9/</sup> As it has stated in its comments filed in CC Docket No. 96-128, AirTouch believes the public interest also would be served by a caller pays compensation mechanism for toll-free calls. The present proposal, however, is a viable supplement that serves Congressional and Commission objectives. The Commission also should evaluate in this proceeding the modified caller pays plan advocated by American Alpha Dispatch Services, Inc. and others. See Petition for Reconsideration in CC Docket No. 96-128, filed December 1, 1997, by American Alpha Dispatch Services, Inc., at p. 5.

<sup>10/</sup> Of course, if an entire NXX is allocated, the public would be educated by the toll-free industry that calls to these numbers could not be completed from payphones without a coin deposit.

contiguous and are fixed, the PSP can readily program its phones to implement the plan.<sup>11/</sup> In order to determine the total numbers required, AirTouch recommends that the Commission undertake a study (or request interexchange carriers ("IXCs") to undertake such a study) to determine the scope of interest for such a service among potential subscribers, including existing toll-free subscribers.

AirTouch's plan is designed to supplement the existing per-call compensation system.<sup>12/</sup> If the toll-free number is within the dedicated range, the caller would pay the payphone charge. If the toll-free customer subscribes to a toll-free number other than the dedicated NXX, the customer, rather than the caller, would pay the applicable per-call charge imposed by the PSP, if passed through by the carrier. Under either the existing per-call compensation system or AirTouch's per-call payment proposal, PSPs will be guaranteed fair compensation for each and every completed call using their payphones, as required by the Act, at a rate derived from the local coin rate.

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<sup>11/</sup> AirTouch believes that the programming required to implement this feature is largely already undertaken by PSPs in order to program payphones to recognize new NPAs and toll-free numbers. Because the dedicated NXX numbers would be in a single block, the programming could be designed to treat calls using these numbers as if they were local calls to which the PSP's local coin rate would apply, thereby minimizing any burden on the PSP. In addition, as shown below, interexchange companies could avoid placing their access code numbers within this block, thereby satisfying TOCSIA.

<sup>12/</sup> Ongoing proceedings before the Commission and the Court should not deter the Commission from proceeding on AirTouch's proposal, which can be adopted and implemented in conjunction with existing rules.

#### **IV. The AirTouch Proposal Will Serve the Public Interest**

The Commission has acknowledged the “twin goals” of “promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public” that are embodied in Section 276.<sup>13/</sup> Simply stated, it was Congress’ intent that the Commission’s payphone compensation rules (1) generate competition for payphone customers among PSPs (including spurring new providers to enter the market) and (2) increase the number of payphones, both in general and at given locations (for example, at airports and hotels). These goals are related: Competition can and will develop only when consumers have a choice of payphones at the same location; consumer choice will lead in turn to competition among payphone providers.

AirTouch’s proposal will serve Congressional and Commission goals by creating choices for consumers and carriers. Because the decision whether or not to deposit coins lies with the person placing the call to a dedicated 8XX number, there is incentive for new PSPs to enter the payphone market and compete with established PSPs on price and service. Negotiation of rates can occur, as with most consumer transactions, at the point of purchase — in this case at the payphone. The market therefore should experience both competition among PSPs and an increase in the number of payphones available for public use. Congressional goals will be served, and the statutory requirement that PSPs are

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<sup>13/</sup> *Second Payphone Order*, para. 7.

“fairly compensated for each and every completed intrastate and interstate call using their payphone”<sup>14/</sup> will be satisfied.

Payphone users and toll-free number subscribers will benefit from this plan.

Based on its own experience,<sup>15/</sup> AirTouch believes that a large and significant number of toll-free subscribers -- of whom there are at least seven million in the United States<sup>16/</sup> — would welcome an alternative compensation system.<sup>17/</sup> AirTouch’s plan also diminishes the effects of call blocking, which is a necessary component of the Commission’s carrier pays per-call compensation plan, but nonetheless is not ideal because it undermines the goal of “widespread deployment of payphone services to the benefit the general public.”<sup>18/</sup>

PSPs and carriers also will benefit. First, AirTouch’s proposal is more efficient from a network perspective than the current method because the call will not be placed unless coins are deposited. Under the current method, the caller uses not only the payphone to place the call, but also the network facilities (to connect the call through to

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<sup>14/</sup> 47 U.S.C. § 276(b)(1)(A).

<sup>15/</sup> AirTouch has approximately 120,000 toll-free number subscribers. More than 75% of those subscribers (who already pay monthly fees for their numbers) have informed AirTouch that they want to block calls from payphones rather than incur additional charges for such calls.

<sup>16/</sup> *First Report and Order*, para. 325. This is a 1995 figure and is likely higher today.

<sup>17/</sup> See, e.g., Petition for Reconsideration of the Consumer-Business Coalition for Fair Payphone 800 Fees, CC Docket No. 96-128, December 1, 1997.

<sup>18/</sup> 47 U.S.C. § 276(b)(1).

the IXC) and the IXC's facilities (before the call is blocked). Thus, a call may be held open for a brief period while the IXC is ascertaining whether to block the call.<sup>19/</sup> In contrast, under AirTouch's proposal, the call will not leave the payphone until coins are deposited, saving the payphone operator use of its payphone lines and CPE.<sup>20/</sup> At the same time, PSPs, LECs, and IXCs will be spared the costly burden of establishing call blocking, tracking, and compensation systems.

Second, there will be no question about who is responsible for compensating the PSP. All PSPs will benefit by receiving direct and immediate compensation for "each and every completed call," as required by the statute. The PSP will have use of the money as soon as it is collected and there will be no possibility of a billing dispute.

Finally, the AirTouch proposal solves a major concern expressed in the past about adopting a "caller pays" approach to PSP compensation. The Commission wants payphone users who desire to utilize a long distance carrier other than the presubscribed carrier at the payphone to be able to reach the alternative IXC via an 800 access number without inserting a coin. Indeed, this result is viewed by some as being compelled by the

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<sup>19/</sup> AirTouch understands that IXCs also have limited capability to let the calling party know that a toll-free call from a payphone is blocked. In several instances, IXCs have had to use a standard intercept message (e.g., "the number you have called is no longer in service/has been changed to [the new number]"). Unfortunately, such messages are not precise and may lead to additional calls being placed from the payphone in order to confirm that the number dialed was correct.

<sup>20/</sup> A PSP could use its standard intercept message (e.g., "please deposit thirty-five cents to complete this call"), thereby avoiding problems with the current system.



Telephone Operator Consumer Services Improvement Act. The AirTouch proposal would leave the Commission's treatment of standard toll-free numbers unchanged. A toll-free number subscriber would opt for a new dedicated 8XX number only if the subscriber desires to have the party calling him or her assume the obligation of paying the PSP. Presumably, IXCs seeking potential customers would not select access numbers from this dedicated 8XX code.<sup>21/</sup> Consequently, the AirTouch proposal would have no adverse effect on the ability of payphone users to reach alternative IXCs without a coin charge.

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<sup>21/</sup> Of course, an IXC may keep its existing toll-free access number and also subscribe to a toll-free number within the dedicated NXX in order to offer its customers an alternative to incurring the payphone charge.

## **V. Conclusion**

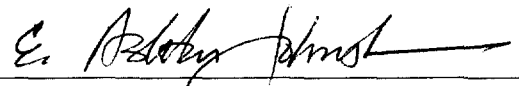
WHEREFORE, the foregoing premises duly considered, AirTouch Paging respectfully requests that the Commission immediately initiate a proceeding to make available a dedicated NXX code or range of numbers within an NXX code, thereby providing an alternative per-call compensation system for toll-free calls placed from payphones.

Respectfully submitted,

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April 17, 1998

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### **CERTIFICATE OF SERVICE**

I, Michelle A. Harris, hereby certify that I have on this 17<sup>th</sup> day of April, 1998, caused a true and correct copy of AirTouch Paging's foregoing "Petition for Rulemaking" to be sent by hand to the following:

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